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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2056

MARK A. LIVENGOOD
29211 Avenue 13 1/4
Madera, CA 93638

A C C U S A T I O N

Respiratory Care Practitioner No. 23657

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about June 23, 2004, the Respiratory Care Board issued Respiratory Care Practitioner License Number 23657 to Mark A. Livengood (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2009, unless renewed.

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4. Section 3750 of the Code states:

(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).

“A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of any offense which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this article.”

“In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case.”

“For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the

1 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
2 those involving the following:

3 (a) Violating or attempting to violate, directly or indirectly, or assisting or
4 abetting the violation of or conspiring to violate any provision or term of the Act.

5 ...

6 (c) Conviction of a crime involving driving under the influence or reckless driving
7 while under the influence.

8 9 **CAUSE FOR DISCIPLINE**

10 (Conviction of a Crime)

11 8. Respondent is subject to disciplinary action under sections 3750 (d) and
12 (g), 3752, and the California Code of Regulations sections 1399.370 (a) and (c) in that he was
13 convicted of a crime involving driving under the influence. The circumstances are as follows:

14 9. On or about April 29, 2005 the California Highway Patrol responded to
15 reports of car driving south in the northbound lanes of Highway 99. After stopping the car, CHP
16 officers determined that the driver, respondent Mark Livengood, was under the influence of
17 alcohol and arrested respondent for violating Vehicle Code sections 23152(a) (Driving Under the
18 Influence), 23152(b) (Driving with a Blood Alcohol Level Above 0.08%), and 14601.2(a)
19 (Driving with a Suspended License).

20 10. On or about August 8, 2005, in Fresno County Superior Court Case
21 Number T05905296-0, Respondent entered a plea of no contest to the charge of violation of
22 Vehicle Code section 23152(a), (Driving Under the Influence), and admitted a prior conviction
23 for a similar offense.

24 **DISCIPLINE CONSIDERATIONS**

25 11. To determine the degree of discipline, if any, to be imposed on
26 Respondent, Complainant alleges that on or about March 15, 2005, in a prior action, the
27 Respiratory Care Board of California issued Citation Number C-05-0144 and ordered
28 Respondent to pay a fine of \$250, upon a finding that Respondent had on or about December 1,

1 2004, been convicted of violation of Vehicle Code section 23152(b)--Driving a Vehicle with a
2 Blood Alcohol Above .08%. That Citation is now final and is incorporated by reference as if
3 fully set forth.

4 PRAYER

5 WHEREFORE, Complainant requests that a hearing be held on the matters herein
6 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

7 1. Revoking or suspending Respiratory Care Practitioner License Number
8 23657, issued to Mark A. Livengood;

9 2. Ordering Mark A. Livengood to pay the Respiratory Care Board the costs
10 of the investigation and enforcement of this case, and if placed on probation, the costs of
11 probation monitoring;

12 3. Taking such other and further action as deemed necessary and proper.

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14 DATED: February 16, 2007

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17 Original signed by Liane Zimmerman for:
18 STEPHANIE NUNEZ
19 Executive Officer
20 Respiratory Care Board of California
21 Department of Consumer Affairs
22 State of California
23 Complainant
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